tion shall in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver-general, for the use of the commonwealth, an excise tax, to be assessed by the tax commissioner of one-fiftieth of one per cent of the par valuation of its capital stock as stated in the annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of $2,000. *Held,* that the petitioners could not recover, *Cheney Bros. Co.* v. *Commonwealth* (Mass. 1914), 106 N. E. 310.

The statute was upheld as being within the power of the state to impose a license fee upon foreign corporations for the privilege of doing business within the state even though the capital stock of the corporation is used as a basis for measuring the amount, *Atty. Gen.* v. *Electric Storage Battery Co.,* 188 Mass. 239; *Keystone Watch Case Co.* v. *Com.,* 212 Mass. 50, 90 N. E. 1063. A similar statute in Kansas was held invalid as imposing a burden upon interstate commerce in *Western Union Co.* v. *Kansas,* 216 U. S. 1 and *Pullman Co.* v. *Kansas,* 216 U. S. 56. But the Masaschusetts statute was upheld in *Baltic Mining Co.* v. *Com.,* 207 Mass. 381 and *S. S. White Dental Co.* v. *Com.,* 212 Mass. 35, as being a tax upon real and substantial local business and not a burden upon interstate commerce; and these holdings were upheld by the United States Supreme Court in 231 U. S. 68, 34 Sup. Ct. 15, 58 L. ed. 127. For comment upon these cases see 12 MICH L. REV. 210. In the principal case the court held that the relationship between interstate and intrastate business was of no consequence and the corporation, using property of real and substantial value in its intrastate business, was liable to the excise.

EASEMENTS—CREATION BY IMPLICATION.—Where the defendant, as owner of a tract of land, conveyed a portion of it to another, the deed making no provision relative to the use of a pump, operated by a gasoline engine, and a path leading thereto, both situated on the portion retained by the defendant, *held,* that the use was sufficiently necessary, apparent and continuous to constitute an easement acquired by the plaintiff. *Adams* v. *Gordon* (Ill. 1914) 106 N. E. 517.

This case appears to be in accord with recent Illinois decisions. It is not essential that the easement claimed be absolutely necessary to the use and enjoyment of the property, it is sufficient if it is highly beneficial. *Newell* v. *Sass,* 142 Ill. 104; *Powers* v. *Heffernan,* 233 Ill. 597. The easement in the principal case was sufficiently visible and apparent. *Foote* v. *Yarlott,* 238 Ill. 54; *Toothe* v. *Bryce,* 50 N. J. Eq. 589; *Larson* v. *Peterson,* 53 N. J. Eq. 88. And the easement of passage and use of pump is continuous in the proper sense of that term. *Foote* v. *Yarlott,* supra; the right of physical entry and interference by man upon the servient estate being in the nature of a "secondary easement," which is appurtenant to the primary or actual easement. *Toothe* v. *Bryce,* supra; GALE & W. EASEM., 323; WASHBURN, EASEM., 24 and 25. The principal case, however, would seem to extend the doctrine of continuous easements as laid down in the last named authorities, inasmuch as the use of path and pump in the principal case depends for its enjoyment upon an actual interference of man by entry at each time of its use, and this

has been declared characteristic of a non-continuous easement. *Polden* v. v. *Bastard,* 4 *Best* & S. 527, L. R. 1 Q. B. 156; (but compare *Brown* v. *Alabaster,* L. R. 37 Ch. D. 490); *Morgan* v. *Meuth,* 60 Mich. 238; *Toothe* v. *Bryce, supra; Oliver* v. *Pitman,* 98 Mass. 46. In support of the principal case, *Foote* v. *Yarlott, supra.*

EVIDENCE—INVOLUNTARY CONFESSION AS IMPEACHING EVIDENCE.—In a prosecution for murder the defendant took the stand as a witness in his own behalf. For the purpose of impeachment the prosecuting attorney was permitted to cross-examine the accused as to the contents of a written involuntary confession, made by him while in the custody of the officers making the arrest. *Held,* this was error because an involuntary confession of guilt is incompetent for any purpose. *Jones* v. *State* (Neb. 1914) 149 N. W. 327.

The decisions on this point are very few and about evenly divided. In accord with the principal case, and holding that an involuntary confession cannot be used for any purpose whatever, not even to impeach the defendant as a witness, are *Shephard* v. *State,* 88 Wis. 185; *Harrold* v. *Oklahoma,* 169 Fed. 47; *People* v. *Yeaton,* 75 Cal. 415; *State* v. *Steeves,* 29 Or. 85; *Morales* v. *State,* 36 Tex. Crim. 234. These courts argue that to admit in evidence an involuntary and therefore inadmissible confession for the purpose of impeaching the accused is a mere subterfuge, unreasonable and unjust. Because the impeaching evidence shows guilt it is doubtful if the jury will restrict it to its legitimate use of affecting credibility only. As stated in *Shephard* v. *State,* supra "The object is to get the confession in evidence. It cannot be done directly but it can be done indirectly. It cannot be used to convict but it can be used to contradict and in that way it is used to convict him all the same." Another line of authority holds that an involuntary confession may be used to impeach the accused when the latter testifies, on the ground that by availing himself of the right to testify he thereby submits himself to the same tests of trustworthiness, and the same rules of cross-examination as apply to other witnesses, and the fact that evidence is admissible for one purpose should not exclude it because it would be inadmissible for another purpose. *Commonwealth* v. *Tolliver,* 119 Mass. 313; *Hicks* v. *State,* 99 Ala. 169; *State* v. *Broadbent,* 27 Mont. 342. As a matter of strict legal theory the latter view would seem to be sound, because the involuntary confession is not used as substantive evidence, for the purpose of proving the truth of the facts stated, but rather to show that the accused made inconsistent and contradictory statements—whether they be true or false—which have a bearing on his credibility. Since the accused cannot be compelled to testify at all, yet if he does it is not unfair to require him to submit to the rules governing other witnesses. *Commonwealth* v. *Bonner,* 97 Mass. 587; *People* v. *Hickman,* 113 Cal. 80; *People* v. *Casey, 72* N. Y. 393; *State* v. *Beaty,* 25 Mo. App. 214; *Yanks* v. *State,* 51 Wis. 464; *Boyle* v. *State,* 105 Ind. 464; *Fitzpatrick* v. *U. S.,* 178 U. S. 304.

EVIDENCE—JUDICIAL NOTICE OF LOCAL OPTION ELECTION.—In a prosecution for an unlawful sale of liquor under an act providing for the calling of an election in any city or town to determine by majority vote whether the